SUPERIOR COURT OF THE STATE OF CALIFORNIA

FOR THE COUNTY OF LOS ANGELES

DEPARTMENT NO. 49 HON. PETER D. LICHTMAN, JUDGE

GILBERT N. MICHAELS, et al., Plaintiff, vs. WILDENSTEIN & CO., INC., et al, Defendant.	No. BC 137720
AND RELATED CROSS-ACTION	

REPORTER'S TRANSCRIPT

THURSDAY, JULY 16, 1998

APPEARANCES:

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Official Court Reporter

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[Page 12, lines 8-11]

[Counsel for Michaels:] I'm not suggesting that that statute is binding on this Court. I'm suggesting that it is a factor that the Court can look to in determining if plaintiff acted in a reasonable fashion and in good faith. And, at least in Kolani, the court was persuaded that since the plaintiff in that action had not filed his second claim until 78 days after the supplemental claims were dismissed, he did not act in a timely fashion, and therefore equitable tolling was not applied.

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[Page 16, lines 19-28; Page 17, lines 1-2]

[The Court:] ... So now from the initial time of discovery to 1995, three years – over three years has elapsed, and the whole purpose behind the statute of limitations is to not let claims go stale.

And now, what's also interesting, if I were to invoke equitable tolling, I have an anomaly where essentially cases are supposed to be prosecuted, we are now in 1998, and we are beyond the five-year statue if you take the date from the time this action was originally pursued in federal court. That's an interesting anomaly. This case is now beyond the five-year statute where ordinarily this case would have been tried or dismissed. ...